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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 CHRISTOPHER C. PRESTON,

12 Defendant.

CASE NO. CR11-5537BHS

ORDER DENYING
DEFENDANTS MOTIONS TO
DISMISS INDICTMENT

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14 This matter comes before the Court on Defendant Christopher Preston's
15 ("Preston") motions to dismiss the indictment (Dkts. 19 & 20). The Court has considered
16 the pleadings filed in support of and in opposition to the motions and the remainder of the
17 file and hereby denies the motions for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On November 3, 2011, the United States of America ("Government") filed a one-
20 count indictment against Preston for failure to register and update sex offender
21 registration in violation of the Sex Offender Registration and Notification Act
22 ("SORNA"), 18 U.S.C. § 2250. Dkt. 1.

1 On May 12, 2012, Preston filed a motion to dismiss the indictment based on the
2 Delegation Doctrine (Dkt. 19) and a motion to dismiss the indictment based on the Ex
3 Post Facto clause and the Commerce clause (Dkt. 20). On May 16, 2012, the
4 Government responded to both motions. Dkts. 24 & 25.

5 **II. FACTUAL BACKGROUND**

6 On July 15, 1998, Preston pled guilty to rape. Preston was sentenced to 100
7 months of imprisonment to be followed by 240 months of supervised release. On July
8 31, 2006, Preston was released from prison. On April 17, 2009, Preston registered as a
9 sex offender.

10 The Government alleges that in October 2011, the United States Marshalls
11 developed information that Preston was living in Vancouver, Washington and was not
12 registered as a sex offender at that location. *See* Dkt. 24 at 2.

13 **III. DISCUSSION**

14 **A. Delegation Doctrine**

15 Article I, § 1 of the Constitution declares that “[a]ll legislative Powers herein
16 granted shall be vested in a Congress of the United States.” From this language the
17 Supreme Court has derived the “nondelegation doctrine,” which provides “that Congress
18 may not constitutionally delegate its legislative power to another branch of government.”
19 *Touby v. United States*, 500 U.S. 160, 165 (1991). Where Congress seeks to delegate the
20 implementation of its laws, and not the lawmaking itself, it may do so, but it must “lay
21 down by legislative act an intelligible principle to which the person or body authorized to
22 [exercise the delegated authority] is directed to conform[.]” *Mistretta v. United States*,

1 488 U.S. 361, 409 (1989) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S.
2 394, 406 (1928), brackets in *Mistretta*).

3 In this case, Preston argues that the Indictment against him must be dismissed
4 because SORNA violates the nondelegation doctrine. Although Preston presents
5 numerous arguments in a lengthy, well-researched brief, the Court is not persuaded that
6 SORNA is unconstitutional. *See United States v. Guzman*, 591 F.3d 83 (2nd Cir.), *cert.*
7 *denied* 130 S. Ct. 3487 (2010); *see also United States v. Carter*, 2011 WL 5520290
8 (November 10, 2011, W.D. Wash.). Therefore, the Court concludes that Congress
9 provided an intelligible principle to limit the Attorney General’s discretion and denies
10 Preston’s motion to dismiss the indictment (Dkt. 19).

11 **B. Commerce Clause**

12 In *United States v. George*, 625 F.3d 1124 (9th Cir. 2010) (“*George*”), the Ninth
13 Circuit upheld SORNA against a Commerce Clause challenge. *Id.* at 1129—1130.
14 *George*, however, was subsequently vacated on other grounds and dismissed. *United*
15 *States v. George*, 672 F.3d 1126 (9th Cir. 2012). Preston requests that the Court address
16 the issue anew in the absence of binding precedent. Dkt. 20 at 2—3. Although *George* is
17 not binding, Preston fails to show that the Court’s logic or conclusion is erroneous.
18 Therefore, the Court denies Preston’s motion on this issue because Congress had the
19 power under its broad Commerce Clause authority to enact SORNA.

20 **C. Ex Post Facto**

21 Preston argues that SORNA violates the Ex Post Facto clause because it punishes
22 him based on a conviction that occurred prior to SORNA’s enactment. Dkt. 20 at 3-4.

1 Preston concedes that “[o]ther Ninth Circuit and Supreme Court cases, while not directly
2 controlling or completely on point, have rejected similar arguments regarding state sex
3 offender registration requirements.” *Id.* at 4. Preston submits “that the analysis in these
4 cases is flawed and should be reversed by the Ninth Circuit sitting en banc.” *Id.*

5 The Court concludes that, as a matter of law, SORNA is not punitive and does not
6 violate the Ex Post Facto clause. Therefore, the Court denies Preston’s motion on this
7 issue.

8 IV. ORDER

9 Therefore, it is hereby **ORDERED** that Preston’s motions to dismiss the
10 indictment (Dkts. 19 & 20) are **DENIED**.

11 Dated this 29th day of May, 2012.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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